

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 3/22/2012

Action Requested By:
Community
Development

Agenda Item Type
Resolution

Subject Matter:

Approval of a Section 3 Policy to be in compliance with Title 1 of the U.S. Department of Housing and Urban Development act of 1968.

Exact Wording for the Agenda:

Resolution authorizing the approval of a Section 3 Policy to be in compliance with Title 1 of the U.S. Department of Housing and Urban Development act of 1968.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

This resolution will allow the City of Huntsville to be in compliance with Title 1 of the U.S. Department of Housing and Urban Development act of 1968. The purpose of Section 3 is to provide economic opportunities to low- and very low-income persons.

Associated Cost: 0

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: 

Date: 3/21/12

RESOLUTION NO. 12-_____

WHEREAS, the United States Congress passed Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) to further the goal of ensuring that federal housing funds benefit the residents of projects funded wholly or in part by those funds, and

WHEREAS, Part 135 of Section 3 is to establish the policies and procedures to be followed to ensure that the objectives of Section 3 are met; and

WHEREAS, the City of Huntsville Department of Community Development staff has developed a revised Section 3 plan in adherence to 24 CFR, Part 135 that more comprehensively addresses the policies and procedures established in the Act.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntsville, that the Mayor of the City of Huntsville be authorized, to adopt and implement the revised Section 3 Plan to ensure compliance with Federal Law, which said document is substantially in words and figures similar to that certain document attached hereto and identified as "CITY OF HUNTSVILLE SECTION 3 POLICY" consisting of a total of eight (8) pages, and the date March 22, 2012 appearing on the margin of the first page, together with the signature of the President or President Pro tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 22nd day of March, 2012.

President of the City Council of the
City of Huntsville, Alabama

APPROVED this the 22nd day of March, 2012.

Mayor of the City of Huntsville,
Alabama

CITY OF HUNTSVILLE SECTION 3 POLICY

This policy is developed for the City of Huntsville (hereafter referred to as the City) for its exclusive use as a recipient and for its sub-recipients of HUD financial assistance such as CDBG, HOME and Homeless funds. This policy shall be binding upon all contracting, sub-recipient and administrative agreements.

BACKGROUND ON THE SECTION 3 REGULATION

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992, is to "ensure that employment and other economic opportunities generated by certain HUD financial funding shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed toward low and very low-income persons, particularly those who are recipients of government funding for housing, and to Business Concerns which provide economic opportunities to low- and very low-income persons."

Consistent with 24 CFR Part 135, as a recipient of HUD funding, the City of Huntsville requires fulfillment of Section 3 obligations on all contracts that make use of that assistance (that require/trigger section 3). These policies are implemented regardless of the contract amount or whether it is designated as housing construction, housing rehabilitation, lead based paint abatement or other public construction project. The City works to ensure the provision of employment, training, contracting, and other economic opportunities to its residents and other low income persons. In doing so, the City utilizes Section 3 as a means of promoting stability and self-sufficiency to Section 3 Residents. Implementation procedures may be amended periodically by the City to insure that the policy requirements are being met and/or to enhance the efficiencies of compliance.

I. APPLICABILITY

Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992. Section 3, as amended, requires that economic opportunities generated by certain community development housing programs, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

President of the City Council of the
City of Huntsville, Alabama
Date: March 22, 2012

Section 3 requirements apply to all projects and activities funded in whole or in part with covered funds and the entire project budget is then subject to Section 3.

II. DEFINITIONS

Please refer to the 24 CFR 135.5 for a full list of prevailing definitions found in the regulation.

NEW HIRES: full-time employees for permanent, temporary or seasonal employment opportunities for any specific City related contract.

RESIDENT OWNED BUSINESS (ROB): A ROB is a Business Concern owned or controlled by Public Housing Residents, or low income Residents of the City of Huntsville Residents that are: (a) at least 51% owned and operated by one or more public housing residents; and (b) whose management and daily business operations are controlled by one or more such individuals. For purposes of Section 3 compliance, a ROB must also meet the definition of a Section 3 Business Concern as described below.

EMPLOYMENT OPPORTUNITIES GENERATED BY SECTION 3 COVERED ASSISTANCE: All employment opportunities generated by the expenditure of Section 3 covered funding (i.e. operating funding, development funding, and modernization funding) and with respect to Section 3 covered housing and community development funding, all employment opportunities arising in connection with Section 3 covered projects, including management and administrative jobs (including architectural, engineering, or related professional services and jobs directly related to administrative support of these activities) connected with the Section 3 covered project.

RECIPIENT: Any recipient which receives Section 3 covered funding, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian Tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee, or transferee of any such recipient, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include Section 3 contractors.

SECTION 3: Section 3 of the Housing and Urban Development Act of 1968, as amended (12U.S.C.1701u).

SECTION 3 BUSINESS CONCERN: As defined by HUD, a Section 3 Business Concern is one:

A. That is Fifty-one (51%) percent or more owned by Section 3 Residents; or

B. Whose permanent, full-time employees includes persons, at least 30 percent of whom are current Section 3 Residents, or were Section 3 Residents within three (3)

years of the date of first employment with the Business Concern if the contractor is working on a redeveloped or replacement asset; or

C. That provides evidence of a commitment to subcontract a minimum of 25 percent of the total contract award amount (including any modifications) to Section 3 Business Concern s as defined in A or B. Example: If the Contract Amount is = \$1,000,000, contractor must subcontract at least 25% or \$250,000 to Section 3 Business Concern (s) as defined in A or B in this part.

SECTION 3 CLAUSE: The contract provisions and sanction set forth in 24 CFR 135.38

SECTION 3 COVERED ACTIVITY: Any activity that is funded by Section 3 covered funding.

SECTION 3 COVERED ASSISTANCE: Section 3 applies to the following HUD assistance (section 3 covered assistance):

(1) Public and Indian housing assistance. Section 3 applies to training, employment, contracting and other economic opportunities arising from the expenditure of the following public and Indian housing assistance:

- (i) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act);
- (ii) Operating assistance provided pursuant to section 9 of the 1937 Act; and
- (iii) Modernization assistance provided pursuant to section 14 of the 1937 Act;

The requirements of part 135 apply to recipients of covered section 3 housing and community development assistance for which the amount of the assistance exceeds \$200,000; and these requirements apply to contractors and subcontractors performing work on projects funded by housing and community development assistance for which the recipient's award exceeds \$200,000, and the contract or subcontract exceeds \$100,000. If the recipient's award of assistance exceeds \$200,000, but the contracts and subcontracts do not exceed \$100,000, then only the recipient is subject to the section 3 preference requirements. The recipient's responsibility includes awarding contracts, to the greatest extent feasible, to section 3 business concerns.

SECTION 3 COVERED CONTRACT: A contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered funding or for work arising in connection with a Section 3 Covered Project. "Section 3 Covered Contracts" do not include contracts for the purchase of supplies and materials except, whenever a contract for materials includes the installation of the materials, the contract constitutes a "Section 3 Covered Contract".

SECTION 3 COVERED PROJECT: The construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development funding.

SECTION 3 JOINT VENTURE: An association of Business Concerns, one of which qualifies as a Section 3 Business Concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the Business Concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the Section 3 Business Concern:

- Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
- Performs at least 25% of the work and is contractually entitled to compensation proportional to its work.

LOW INCOME PERSON: Families (including single persons) whose incomes do not exceed 80% of the median income for the project area.

VERY LOW INCOME PERSON: Families (including single persons) whose incomes do not exceed 50% of the median family income for the project area.

Please refer to www.huduser.org/portal/datasets/il.html for current, local Income Limit information.

- ❖ Select current year.
- ❖ Select "Access Individual Income Limit area"
- ❖ Select "click here for FY XXXX IL Documentation" (where XXXX is the current fiscal year)
- ❖ Select State & County

III. GOALS OF THE SECTION 3 REGULATION

The City's Section 3 protocol seeks to aid Section 3 residents to the greatest extent feasible in three ways, listed in order of preference:

A. Hiring low- and very low-income workers

Attempt to hire at least 30% of the aggregate number of full-time new hires by the City and its contractors must be Section 3 residents, with a preference for residents at the development where the work is being performed or in the area where the work is being performed.

B. Awarding contracts to Section 3 business concerns

Attempt to award at least 10% of the total dollar amount of all Section 3 covered contracts for building trades work, for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in

connection with housing rehabilitation, housing construction, and other public construction, must be awarded to Section 3 business concerns. Attempt to award at least 3% of the total dollar amount of all other Section 3 covered contracts.

C. Providing other economic opportunities

If the two goals above cannot be met by the City or its contractors, other training and employment opportunities can be provided to substitute for goals A and B. Firms may provide other economic opportunities and will be responsible for soliciting and contracting a qualified firm experienced in providing a Department of Labor Approved curriculum consistent with Section 3 requirements [135.11] in the area of resident training in the following areas:

- Employment Readiness and Professional Development
 - Section 3 Small Business Concern Development Training
 - Building Construction Trades Classroom Training
 - Other direct skills trainings unrelated to public housing solicited commodities
- These are described further in section VII below.

IV. City Responsibilities

The City, as the recipient of HUD funding, accepts the responsibility of not only enforcing the Section 3 requirements, but also pro-actively facilitating compliance with Section 3. The City fulfills this responsibility in the following ways:

- A) Notifying Section 3 residents of opportunities through posting job openings in the offices of procurement and community development, and in local media;
- B) Conveying that the contract work is a Section 3 Covered Contract in any advertisement for bids and proposals
- C) Notifying contractors in each pre-bid meeting of the Section 3 requirements;
- D) Incorporating the HUD mandated Section 3 clauses in all contracts;
- E) Providing Resident Certification and Affidavit forms for employment at the City offices and allowing applications to be submitted at appropriate city locations;
- F) Encouraging the training of Section 3 residents through the City contractors;
- G) Facilitating an opportunity annually for contractors to meet interested Section 3 residents for employment. A list can be developed as a resource for the City and contractors when seeking to hire Section 3 workers
- H) Facilitating an opportunity annually for small contractors to meet large prime contractors interested in bidding work awarded by the City;
- I) Documenting actions taken to comply with Section 3 requirements including all results and impediments;
- J) Reporting annually on its efforts regarding Section 3 implementation (Form-60002);
- K) Refusing to award contracts to businesses or persons who have previously violated Section 3 requirements;

- L) Posting all job sites funded by the City with a location or phone number of whom and how to apply for any opportunities for employment, training or contracting.

V. Contractor Responsibilities

The 30% new hiring goal and 10% & 3% contracts awarded goal are the only safe harbors whereby a contractor will have complied with Section 3. If the two goals above cannot be met by the contractor, other training and employment opportunities can be provided to substitute for those goals, but documentation should be submitted explaining why those numerical goals could not be met. If a contractor substitutes economic opportunities for its achievement of the numerical goals, their efforts need to be equivalent to those that would be required to meet those goals. The acceptability of these efforts will be determined by the City, or in cases of a complaint, by HUD.

Examples of activities to demonstrate these efforts are listed in the appendix to part 135 of the Code of Federal Regulations—24 CFR Part 135. Section III.(A) above of this document applies to fulfilling the first goal of hiring 30% Section 3 residents, and Section III.(B) applies to fulfilling the second goal of awarding 10% & 3% of contracts to Section 3 business concerns. Examples include distributing or posting flyers advertising positions to be filled, contacting the City for a list it may have compiled of Residents that have expressed interest in Section 3 employment, notify the City about open positions, holding job informational meeting for residents, etc. Contractors must submit with any bid or proposal an action plan describing the implementation of Section 3. Omission of this document with a bid or proposal makes that contractor non-responsive, and therefore ineligible to be awarded a contract.

VI. Preferences and Eligibility

Note: All persons that are recipients of housing assistance by the government are Section 3 Residents and Public housing residents are a top priority Section 3 Resident. The businesses owned by public housing residents are also top priority business concerns. When employment or contracting opportunities are offered and all requirements are met and remain equal, public housing residents/businesses within the City shall be provided preference over other Section 3 residents/business concerns and non-section 3 residents/business concerns.

- A) Regarding the hiring of Section 3 residents, Preference shall be given to those residents who live at the project site where the Section 3 covered assistance is expended and all other projects owned or managed by the City covered by covered assistance.

Tier I Section 3 Residents shall be as prescribed below:

- I. Persons assisted with housing by the federal government in the neighborhood within the target area where the project is located.

Tier II Section 3 Residents shall be as prescribed below:

- II. Low and very low income persons within the City of Huntsville and participants in the Youthbuild program.

If no Section 3 residents are available from the project site where the project is located or any other project funded or financed by the City, the contractors shall give Preference to any non-Section 3 Resident without regard for their residency. At all times, City Residents successfully completing training from any approved training course authorized and recognized by the City shall receive a Priority Preference over Tier I residents as a direct reward for their initiative.

- B) Regarding the contracting opportunities for Section 3 business concerns, preference shall be given to business concerns owned at least 51% by any City residents of where the project is located and where the covered assistance is expended. Next, any City residents of any other property owned or managed by the City that is expending the section 3 covered assistance. Last, Section 3 business concerns that are owned at least 51% by residents of the city shall be sought. If no Section 3 business concern is available from the city where the project is located, the contractors shall give Preference to any non-Section 3 business concern.

The City may from time to time be a sub-recipient of community development funds from the City. In that role any contracted activities shall be procured and management based on the community development rules under Section 3 24 CFR Part 135 that state that when any single contract exceeds \$100,000 the contractor shall also have the responsibility of attempting to meet the numerical goals. However, the entire funding amount is Section 3 covered so all opportunities for employment, training, and contracting must be offered to low and very low income persons, the businesses they own and that substantially employ them.

- C) Regarding eligibility, a Section 3 resident seeking employment must fulfill the requirements of the sought position and, if asked, must provide evidence of their Section 3 status (e.g., receipt of public assistance, tax return). A Section 3 business concern seeking to win a contract must fulfill the requirements of the contract and, if asked, provide evidence of their Section 3 status.

VII. Other Economic Opportunities

For contracts or all purchase orders, other economic opportunities may only be used where a contractor or sub-recipient can not comply with the hiring or subcontracting goals set forth in the Preference Tier structure in paragraph VI. Whenever the other economic opportunities are employed they must equal or exceed 3% of the total contract value including any change orders.

VIII. Complaints and Compliance

Any Section 3 resident or business concern that feels that the Section 3 regulations were not complied with may file a complaint directly to the Assistant Secretary for Fair Housing and Equal Opportunity at the following address (or as otherwise directed by HUD:

**Assistant Secretary for Fair Housing and Equal Opportunity
Department of Housing and Urban Development
Regional Field Office
Dept. of Housing and Urban Development
Five Points Plaza Building
40 Marietta Street
Atlanta, GA 30303**

The complaint must be in writing and be received within 180 days from the date of the action upon which the complaint is based. It should include the complainant's name and address, the City or contractor's name and address, and a description of the acts in question. The complainant will receive a response from HUD within 10 days in which further investigation will be explained.

Attachments

24 CFR Part 135 – Section 3 Regulation